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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1978

WILLIE C. ACKER,
Appellant,

vs.

BOARD OF TRUSTEES OF PASS CHRISTIAN
MUNICIPAL SEPARATE SCHOOL DISTRICT,
Respondents.

ON APPEAL FROM THE SUPREME COURT
OF MISSISSIPPI

JURISDICTIONAL STATEMENT

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No. ____

ON APPEAL FROM THE SUPREME COURT OF MISSISSIPPI

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The Pass Christian (Mississippi) School Board, after an administrative hearing, made a final decision not to rehire Willie C. Acker as a teacher on June 27, 1974. This decision was appealed to the Chancery Court of Harrison County, Mississippi, pursuant to the Mississippi Fair Dismissal Act, and

after a hearing de novo, the Chancellor entered an opinion (unreported), dated August 26, 1974, which reversed the decision of the school board. The school board appealed to the Mississippi Supreme Court, which reversed the decision of the Chancellor in an opinion reported at 326 So.2d 799, dated February 17, 1976, and remanded the case to the Chancellor for further consideration. The Chancellor in a second opinion (unreported), dated November 30, 1976, then affirmed the original decision of the Pass Christian School Board not to rehire Mr. Acker. On appeal by Mr. Acker, this decision was affirmed by the Mississippi Supreme Court without opinion and the Petition for rehearing was denied by the Mississippi Supreme Court en banc, also without opinion with judgment entered on

April 26, 1978. 357 So.2d 292 (Miss. 1978).

JURISDICTION

The judgments of the Mississippi Supreme Court sought to be reviewed were entered on February 17, 1976, and April 26, 1978. Notice of appeal was filed with the Mississippi Supreme Court on May 3, 1978.

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1257 (2), as an appeal which draws into question the validity of the Mississippi Public School Fair Dismissal Act (Miss. Code Ann. Sections 37-9-101 through 37-9-113 (Supp. 1974), 1974 Supplement to Volume 10, Pages 55-59), which became effective April 25, 1974, and which, as amended, is now the School Employment Procedures Law of 1977, Mississippi Code of 1972, Sections 37-9-101 through 37-9-113 (Supp.

1977), 1977 Supplement to Volume 10, Pages 66-71, (effective July 1, 1977), infra, Pages 10-17), on the ground that it is repugnant to the Fourteenth Amendment to the Constitution of the United States.

The appellants also contend that the judgment is founded on other errors which though they may involve questions not subject to review by this Court on appeal, nevertheless deprived the appellants of a fair hearing and constituted a denial of due process of law and a denial of the equal protection of the law in violation of the Fourteenth Amendment. These errors are included in the statement of the questions presented by this appeal, hereinafter set forth. If it were not for the invalidity of the Mississippi Fair Dismissal Act which allows or requires these

errors, the appellants would be limited as to these errors to a petition for writ of certiorari, under 28 U.S.C. Section 1257(3). They are included in this appeal under the authority of Prudential Insurance Co. v. Check, 259 U.S. 530, 547 (1921), and Flournoy v. Weiner, 321 U.S. 253, 263 (1943).

In the event that the Court does not consider appeal the proper mode of review, appellant requests that the papers whereupon this appeal is taken be regarded and acted upon as a petition for writ of certiorari pursuant to 28 U.S.C. Section 2103.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Fourteenth Amendment to the Constitution of the United States. This case also involves the validity of the Mississippi Public School Fair Dismissal Act, Sections 37-9-101

through 37-9-113 of the Mississippi Code of 1972 (Supp. 1974), 1974 Supplement to Volume 10, which reads as follows:

37-9-101: Citation of Sections 37-9-101 through 37-9-113.

Section 37-9-101 through 37-9-113 shall be known as and cited as the "Public School Fair Dismissal Act."

37-9-103: Definition.

As used in sections 37-9-101 through 37-9-113 the word "employee" shall include any teacher, principal, superintendent elected by a board of trustees, and other professional personnel employed by any public school district of this state and required to have a valid certificate issued by the state department of education as a prerequisite of employment.

37-9-105: Persons entitled to notice.

Any employee of a school district who has been employed by such district during the entirety of the preceding school year, shall be given notice within seven (7) days of the decision that he not be offered a contract for reemployment for the succeeding school term when:

(a) By January 15 the board of trustees of the school district does not reemploy the superintendent;

(b) By February 15 the superintendent of a school district does not recommend the reemployment of a principal or by March 1 the board of trustees of the district does not approve the recommendation of the superintendent for the reemployment of a principal; or

(c) By April 1 the principal does not recommend to the superintendent the reemployment of a teacher, or by May 1 the principal does recommend the reemployment of a teacher and the superintendent does not approve the recommendation for the teacher's reemployment, or by May 1 the principal and superintendent both recommend the reemployment of a teacher and the board of trustees of the district declines the recommendation.

37-9-107: Notice.

Except in the case of nonreemployment of the superintendent, notice shall be tendered by the superintendent to any employee within seven (7) days of the date when the recommendation to reemploy would have been made under the terms of sections 37-9-15 and 37-9-17 and amendments thereto.

In the case of the superintendent who is not offered a contract for reemployment by January 15 or other date set by section 37-9-13, Mississippi Code of 1972, the president of the board of trustees

shall tender notice to such superintendent within seven (7) days of the date of the board's decision.

The notice shall be mailed by certified mail, return receipt requested.

37-9-109: Rights of employee.

An employee entitled to notice under section 37-9-105 shall be entitled to:

(a) Receive a written statement of the reasons that he shall not be offered a new contract with facts supportive of those reasons upon requests;

(b) Request a public hearing before the board within seven (7) days after receipt of the notice;

(c) Receive a fair and impartial hearing before the board within fourteen (14) days from the date of receipt of the notice from the employee requesting a hearing;

(d) Be represented by legal counsel, at his own expense.

If the employee does not request a hearing, the decision of the board with regard to the reemployment of the employee shall be final.

37-9-111: Hearing.

The board shall, upon receipt of a request for a hearing from the

employee, set the time, place and date of such hearing, and inform the employee of same by registered mail return receipt requested. The hearing shall be conducted under rules of the board which shall embody due process of law and fairness for both parties. The board shall cause to be made a complete and accurate record of the proceedings of the hearing which shall be transcribed, and a copy shall be made available to the employee upon request provided that a charge for the copy not in excess of reporter's fees under section 9-13-33, Mississippi Code of 1972, may be asserted the employee.

The board shall notify the employee in writing of the decision of the board within seven (7) days after the date of completion of the hearing.

37-9-113: Appeals.

Any employee aggrieved by the board's final decision shall have the right to appeal such decision, within thirty (30) days after receipt of the board's decision to the appropriate chancery court in the manner provided in section 11-5-79, Mississippi Code of 1972. Such hearing before the Chancery Court shall be de novo. An appeal to the Supreme Court in a manner provided by law may be taken from the decision of the chancery court.

The Mississippi Public School Fair Dis-

missal Act has since been amended by the School Employment Procedures Law of 1977, Sections 37-9-101 through 37-9-113, Mississippi Code of 1972 (Supp. 1977) 1977 Supplement to Volume 10, page 66. However, such amendments have failed to cure the constitutional defects inherent in the Public School Fair Dismissal Act. The School Employment Procedures Law of 1977 reads as follows:

> 37-9-101: Short title; declaration of legislative intent.
> Sections 37-9-101 to 37-9-113 shall be known as and cited as the "School Employment Procedures Law of 1977."
> It is the intent of the legislature to establish procedures for providing public school employees with notice of the reasons for not offering an employee a renewal of his contract, to provide an opportunity for the employee to present matters in extenuation or exculpation to enable the board to determine whether the recommendation of nonemployment is a proper employment decision and not contrary to law, and not to establish a system of tenure

> or require that all decisions of nonreemployment be based upon cause with respect to employment in the school district.

37-9-103: Definition.

As used in sections 37-9-101 through 37-9-113 the word "employee" shall include any teacher, principal, superintendent elected by a board of trustees, and other professional personnel employed by any public school district of this state and required to have a valid certificate issued by the state department of education as a prerequisite of employment.

37-9-105: Written notice of determination not to offer employee renewal contract shall be given; time therefor.

In the event that a determination is made by a school district not to offer an employee a renewal contract for a successive year, written notice of nonrenewal shall be given within seven (7) days of the date when the recommendation to reemploy would have been made under the provisions of sections 37-9-15 and 37-9-17, and amendments thereto, but in any event no later than the following:

(a) If the employee is a superintendent, the school district shall give notice of nonreemployment on or before February 1;

(b) If the employee is a principal, the school district shall give notice of nonreemployment on or before March 1;

(c) If the employee is a teacher, or other professional educator, the school district shall give notice of nonreemployment on or before April 8.

37-9-107: Repealed.

37-9-109: Rights of employee.
An employee who has received notice under section 37-9-105, upon written request, shall be entitled to:

(a) Written notice of the reasons for nonreemployment, together with a summary of the factual basis therefor, which notice shall be given at least five (5) days prior to any hearing;

(b) An opportunity for a hearing at which to present matters relevant to the reasons given for the nonreemployment decision, including any reasons alleged by the employee to be the reason for nonreemployment;

(c) Receive a fair and impartial hearing before the board or hearing officer;

(d) Be represented by legal counsel, at his own expense.

If the employee does not request a hearing, the decision of the board with regard to the reemployment of the employee shall be final.

37-9-111: Hearing.
(1) The school board, upon request for a hearing from an employee under the terms of sections 37-9-101 to 37-9-113, shall set the time, place and date of such hearing and notify the employee in writing of same. The date shall be set not sooner than five (5) days nor later than thirty (30) days from the date of the request, unless otherwise agreed. The hearing may be held before the board or before a hearing officer appointed for such purpose by the board, either from among its own membership, from the staff of the school district or some other qualified and impartial person, but in no event shall the hearing officer be the staff member responsible for the initial decision of nonreemployment.
(2) The employee shall be afforded an opportunity to present matters at the hearing relevant to the reasons given for the nonreemployment determination and to the reasons the employee alleges to be the reasons for nonreemployment and to be represented by counsel at such a hearing. Such hearing shall be conducted in such a manner as to afford the employee a fair and reasonable opportunity to present witnesses and other evidence pertinent

to the issues in his behalf and to cross-examine witnesses against the employee. The board or the hearing officer may require any portion of the evidence to be submitted in the form of depositions or affidavits, and in case affidavits are received, an opportunity to present counter-affidavits shall be provided.

(3) The board shall cause to be made stenographic notes of the proceedings. In the event of a judicial appeal of the board's decision, the entire expense of the transcript and notes shall be assessed as court costs.

(4) The board shall review the matters presented before it, or, if the hearing is conducted by a hearing officer, the record of the proceedings and, based solely thereon, conclude whether the non-reemployment determination is a proper employment decision, and shall notify the employee in writing of its final decision and reasons therefor. Such notification shall be within thirty (30) days of the conslusion of the hearing if the hearing is conducted by a hearing officer and within ten (10) days of the conclusion of the hearing if the hearing is initially conducted by the board. If the matter is heard before a hearing officer, the board shall also grant the employee the opportunity to appear before the board to present a statement in

his own behalf, either in person or by his attorney, prior to a final decision by the board.

(5) In conducting a hearing, the board or hearing officer shall not be bound by common law or by statutory rules of evidence or by technical or formal rules of procedure except as provided in sections 37-9-101 to 37-9-113, but may conduct such hearing in such manner as best to ascertain the rights of the parties; provided, however, hearsay evidence, if admitted, shall not be the sole basis for the determination of facts by the board of hearing officer.

(6) In the event the decision of the school board is in favor of the employee, the board shall have the authority to order the execution of a contract with the employee for an additional period of one (1) year.

(7) For purposes of conducting hearings under sections 37-9-101 to 37-9-113, the board or hearing officer shall have the authority to issue subpoenas for witnesses and to compel their attendance and the giving of evidence. Any expense connected therewith shall be borne by the party requesting the subpoenas, which shall include an appearance fee for each witness so subpoenaed not inconsistent with state laws governing payments to witnesses. In the event it is necessary to enforce or to quash a subpoena issued to compel the

the attendance of a witness, application shall be made with the chancery court of the county where the school board is located.

37-9-113: Appeals.

(1) Any employee aggrieved by a final decision of the school board is entitled to a judicial review thereof, as hereinafter provided.

(2) An appeal may be taken by such employee to the chancery court of the judicial district in which the school district is located, by filing a petition with the clerk of that court and executing and filing bond payable to the school board with sufficient sureties, in the penalty of not less than two hundred dollars ($200.00), conditioned upon the payment of all of the costs of appeal, within twenty (20) days of the receipt of the final decision of the board.

(3) The scope of review of the chancery court in such cases shall be limited to a review of the record made before the school board or hearing officer to determine if the action of the school board is unlawful for the reason that it was:

(a) Not supported by any substantial evidence;

(b) Arbitrary or capricious; or

(c) In violation of some statutory or constitutional right of the employee.

(4) No relief shall be granted based upon a court's finding of harmless error by the board in complying with the procedural requirements of sections 37-9-101 to 37-9-113. However, in the event that there is a finding of prejudicial error in the proceedings, the cause shall be remanded for a rehearing consistent with the finding of the court.

(5) Any party aggrieved by action of the chancery court may appeal to the Supreme Court in the manner provided by law.

QUESTIONS PRESENTED

1. WHETHER THE MISSISSIPPI PUBLIC SCHOOL FAIR DISMISSAL ACT, SECTIONS 37-9-101 THROUGH 37-9-113, MISSISSIPPI CODE OF 1972 (SUPP. 1974), WHICH FAILS TO PROVIDE FOR A FAIR AND IMPARTIAL HEARING, VIOLATES THE DUE PROCESS CLAUSE AND EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT.

2. WHETHER THE APPELLANT HAS BEEN DENIED DUE PROCESS BECAUSE COUNSEL FOR THE APPELLEE SERVED A DUAL ROLE AS PROSECUTOR FOR THE PRINCIPAL AND AS COUNSEL TO THE DECISION-

MAKING BOARD.

3. WHETHER THE APPELLANT WAS DENIED DUE PROCESS IN THAT THE PASS CHRISTIAN SCHOOL BOARD WAS NOT AN IMPARTIAL DECISION MAKER.

4. WHETHER THE BOARD'S FAILURE TO ARTICULATE THE REASONS FOR DISMISSAL AND THE EVIDENCE SUPPORTING THOSE REASONS DENIED APPELLANT DUE PROCESS.

STATEMENT OF THE CASE

Although the appellant, Willie C. Acker, a black man teaching at a formerly all-white high school, had received on March 5, 1974, an "above average" evaluation (R. 60, 61), on March 7, 1974, Mr. Acker was notified by this principal that the principal would not recommend Mr. Acker for reemployment as a teacher for the 1975-76 school year. (R. 63) Two reasons for non-recommendation were alleged at that time - namely, using a ladies restroom and taking four

students to New Orleans without permission. (R. 64) On March 7, 1974, Mr. Acker expressed a desire to appear before the school board. (R. 64)

Two days later, without benefit of counsel or other elements of due process, Mr. Acker met in executive session with the school board. (R. 68)

Then Mr. Acker, in writing, requested a hearing before the board, which on April 3, 1974, refused to permit the hearing. (R. 68) By letter from the superintendent dated April 4, 1974, Mr. Acker was informed of the denial of a hearing and of the board's finding that it did not have the power to rehire Acker in any event. (R. 52)

On April 18, 1974, Mr. Harlin Hall, Mr. Acker's principal, tendered his resignation to the Board, effective at the end of the school year. (R. 70)

Meanwhile, on April 12, 1974, Mr. Acker's counsel had sent another written request for a hearing. (R. 53) This request for a hearing was considered on April 18, 1974, by the board, which referred the letter to its attorney for recommendation. (R. 71)

At its April 25, 1974, meeting, the board was advised of the new statute, Sections 37-9-101 through 113, Miss. Code of 1972 (Supp. 1974) and decided to grant Mr. Acker a hearing. (R. 73) On the same night, the board elected a new principal for the 1974-75 school year for the high school where Mr. Acker was teaching. (R. 73) This point is relevant because, according to Section 37-9-17, Miss. Code of 1972, only the principal can initiate the recommendation of teachers for employment. Although the old principal had resigned, the record does not reflect any attempt

by the board to refer Mr. Acker to the new principal for consideration of a recommendation.

On May 2, 1974, the board set a hearing date for Mr. Acker. (R. 75) The date set for the hearing was May 21, 1974. On May 3, 1974, the superintendent sent a letter to Mr. Acker notifying him of the hearing. (R. 54)

On May 21, 1974, the Board met again. The minutes of the meeting reflect a review of procedures for the Acker hearing but the "procedures" are not stated. (R. 77)

Later on May 21, 1974, Mr. Acker's new counsel, who had just been retained, requested a continuance of the hearing and requested a statement of the reasons for the non-renewal of Mr. Acker's contract. (R. 78)

By letter from the board's attorney,

dated May 24, 1974, Mr. Acker was informed of the new date for the hearing, June 3, 1974, (R. 55), and Mr. Acker was also informed of four reasons for his non-renewal. (R. 56) It should be noted that these reasons are stated in language different from the earlier notice from the now-resigned principal, and two of the reasons (reasons numbers 3 and 4) did not appear on the earlier notice. (R. 64)

On June 3, 1974, a hearing was conducted by the Board. Counsel for Mr. Acker, conducted a voir dire of the board. (R. 15, 16) After the voir dire, Mr. Acker's counsel objected (R. 17, 18) to the proceedings on a number of due process grounds, including that the board was not an impartial tribunal, that the board's attorney was simultaneously acting as the principal's advocate serving as the prosecutor, that

the hearing was too late and untimely (not counting the short continuance), that the reasons given for the non-renewal were given untimely, that the specific notice, hearing, and certified mail requirements of the new statute, Sections 37-9-107 through 111, Miss. Code of 1972, (Supp. 1974), were violated, and that the whole procedure violated the minimum elements of fairness protected by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States. (R. 17,18)

The board rendered a decision on June 27, 1974, not to reemploy Mr. Acker, without articulating the reasons or citing the evidence supporting the board's decision. (R. 84)

Thereafter, Mr. Acker appealed to the Chancery Court of the First Judicial Dis-

trict of Harrison County, Mississippi, under the then new statute, Section 37-9-113, Miss. Code of 1972 (Supp. 74). (R. 2)

Since the hearing on appeal was to be a hearing de novo, Mr. Acker filed a Bill of Complaint (R. 2, 3), contending that the Board had violated numerous procedural and substantive legal rights of the Appellant protected by state and federal law.

The Chancellor granted a motion to strike the Bill of Complaint. (R. 3)

After a full hearing, the Chancellor entered an opinion (R. 85) and a Final Decree (R. 85), requiring the board to rehire Mr. Acker.

The Board appealed the decision of the Chancellor, and the teacher, Mr. Acker, filed a cross-appeal only on the issue of striking the Bill of Complaint.

The Supreme Court of Mississippi on the appeal by the board reversed and remanded but affirmed on cross-appeal the striking of the Bill of Complaint. Board of Trustees of Pass Christian Municipal Separate School District v. Acker, 326 So. 2d 799 (Miss. 1976).

On remand the Chancellor affirmed the Board. (R. 85-87) The teacher, Mr. Acker, then appealed to the Mississippi Supreme Court which affirmed, without opinion, the decision of the Chancellor on March 8, 1978, and en banc denied, without opinion, the appellant's petition for rehearing on April 26, 1978. Acker v. Board of Trustees of Pass Christian Municipal Separate School District, 357 So.2d 292 (Miss. 1978).

HOW THE FEDERAL QUESTIONS WERE RAISED AND DECIDED BELOW

On his first appeal to Chancery Court in 1974, following an adverse determination by

the school board, Willie Acker assigned as error the failure of the school board to articulate reasons for the non-renewal of his contract, the unfairness of the school board's hearing counsellor simultaneously serving as the prosecutor for the accusing principal, and the absence of an impartial decision maker for the administrative hearing. The appellant also complained of other constitutional infirmities inherent in the school board determination in a Bill of Complaint filed for this de novo hearing before the Chancery Court. The Chancery Court granted a motion to strike the Bill of Complaint and although its decision on the merits was favorable to appellant, that decision was based on the failure of the school board to comply with the procedural requirements of the Public School Fair Dismissal Act, and the Constitutional questions

were not considered.

When the school board appealed the decision of the Chancery Court to the Mississippi Supreme Court, Willie Acker cross-appealed as to the Chancery Court's order striking his Bill of Complaint, claiming the Chancery Court should have applied federal law to the case. The Chancery Court's action in striking Willie Acker's Bill of Complaint was affirmed with the following language:

> Dealing first with the cross-appeal, we hold that the Chancellor correctly refused to permit the filing of a new and original suit in the pending appeal case and in striking the bill. The case, on cross-appeal, is affirmed.

Board of Trustees of Pass Christian Municipal School District v. Acker, 326 So.2d 799, 800 (Miss. 1978). On direct appeal, the State Supreme Court reversed and remanded the case, ruling that a trial de novo

by the Chancery Court on appeal from an administrative agency violated the Mississippi Constitutional separation of powers. 326 So.2d at 801. No ruling was made on the alleged violations of the United States Constitutional law.

On remand of the case to the Chancery Court, Willie Acker again complained, through briefs and oral arguments, of constitutional violations in the hearing process, including the state statute's repugnance to the Fourteenth Amendment to the Constitution of the United States. The Chancery Court in its opinion found that the school board "did not unconstitutionally violate the rights of others or the complaining party." (Appendix p. 70). With this brief statement, the constitutional infirmities of the state statute and other violations of federal law alleged by the

appellant, Willie C. Acker, were summarily dismissed. The Chancery Court proceeded to affirm the original decision of the school board not to rehire Mr. Acker.

The appellant again raised these federal Constitutional issues in his subsequent appeal to the Mississippi Supreme Court, through assignments of error, briefs, and oral argument, and in his petition for rehearing before that Court. Further, in his petition for rehearing, Willie Acker asked that the court at least "certify in a final opinion that it has passed on these federal questions, in order to permit the appellant to seek an appeal or certiorari to the Supreme Court of the United States." The Mississippi Supreme Court, however, affirmed the decision of the Chancery Court and denied appellant's petition for rehearing without opinion. Acker v. Board of

Trustees of Pass Christian Municipal Separate School District, 357 So.2d 292 (Miss. 1978).

THE FEDERAL QUESTIONS ARE SUBSTANTIAL

The following federal Constitutional questions should control the decision of this case, notwithstanding that subordinate state issues have been decided by the State Courts in favor of the School Board. A proper decision of these federal questions would result in the rendering of an order in favor of the appellant, Willie Acker.

1. THE PUBLIC SCHOOL FAIR DISMISSAL ACT, SECTIONS 37-9-101 THROUGH 37-9-113, MISSISSIPPI CODE OF 1972 (SUPP. 1974), IS REPUGNANT TO THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

"The Public School Fair Dismissal Act," Sections 37-9-101 through 113, Miss. Code of 1972, (Supp. 1974), failed to provide

the teacher herein with due process of law and the equal protection of the law as protected by the Fourteenth Amendment to the Constitution of the United States in that it failed to grant school boards the power after a hearing to overrule the principal or superintendent's negative recommendation; it failed to require a pre-termination hearing; it failed to require the school boards, after a hearing, to state in a written notice to the teacher, the reasons for a board's decision of nonrenewal with evidence supporting the board's decision; it permitted school boards to hear cases in which members of the board had either a personal stake, conflict, bias or prejudice; it failed to state any measurable standard for renewal of teacher's contracts by which the substantiality of evidence could be tested; it permitted an administrative

agency to exercise a judicial function; it failed to prohibit the attorney for the principal from serving as counsel for the school board during the conduct of the hearing. Cf., Sindermann v. Perry, 430 F.2d 939 (5th Cir. 1970), affirmed 408 U.S. 593 (1972); Ferguson v. Thomas, 430 F.2d 852 (5th Cir. 1970); Goldberg v. Kelly, 397 U. S. 254, at 267, 268, and 271 (1970).

Mr. Acker was not advised at all of his termination in sufficient detail to fairly enable him to show error prior to the initial (and in reality the actual) decision by the school board in this case, which was made long before the letter of May 24, 1974, cited by the appellee. The real decision by the school board was made summarily and secretly on March 24, 1974, (R. 68), long before the hearing.

Although the letter of May 24, 1974,

(R. 56) allegedly gave the principal's reasons for non-renewal, the principal had not stated reason 3 and 4 in his written earlier statement. (R. 64) Incredibly, by the time reasons 3 and 4 appeared on the school board attorney's letter of May 24, 1974, (R. 56), the principal had resigned (R. 70). So, whose reasons are these reasons 3 and 4? How can one show error when one does not even known the source of the accusation?

The causes of termination must be articulated by the board after the hearing, but, the board's advice to Mr. Acker of the causes or reasons for the final decision of termination were never communicated to him. (R. 84)

Since the state statute on its face and as applied in this case failed to require these minimum elements of due process, it

is repugnant to the Fourteenth Amendment to the Constitution of the United States.

2. THE APPELLANT HAS BEEN DENIED DUE PROCESS BECAUSE COUNSEL FOR THE APPELLEE SERVED A DUAL ROLE AS PROSECUTOR FOR THE PRINCIPAL AND AS COUNSEL TO THE DECISION-MAKING BOARD.

It is incompatible with due process for the school board attorney to act in the dual capacities of counsel to the tribunal and proponent of the school principal's charges against the teacher. It is well settled that due process requires that the tribunal have the appearance and substance of impartiality. E.g., Goldberg v. Kelly, supra at 271; Ferguson v. Thomas, supra at 856 (5th Cir. 1970). Where the board serves both as the trier of fact and prosecutor, there are "obvious defects in the fact-finding process occasioned by the

(School) Board's multiple functioning vis-a-vis the Teacher." Pickering v. Board of Education, 391 U. S. 563, 578-79, n. 2 (1968).

Due process is denied when, as here, the tribunal's advisor also serves as prosecuting attorney. Muller v. Board of Education, 200 N.E. 2d 838, 846-48 (Ill. App. 1964). Mack v. Florida State Board of Denistry, 296 F.Supp. 1259, 1263 (S.D. Fla. 1969), aff'd in part, 430 F. 2d 862 (5th Cir. 1970); State ex rel. Ball v. McPhee, 94 N.W. 2d. 711, 721-11 (Wis. 1959). Horn v. Township of Hill-town, 337 A.2d 858 (Pa. S. Ct. 1975); Appeal of Robert Feldman, 346 A. 2d 895 (Pa. Comwelth. 1975); Monahan v. Bd. of Trustees, 486 P. 2d 235, 238 (Wyo. 1971).

The principal's prosecutor (one and the same as the board's attorney) participated

in the deliberations on substantive and procedural issues throughout the many months that the board considered this case. The record shows the board's attorney acting as follows:

1. He instructed the board regarding voir dire. (R. 15)

2. He defended the board's activities at previous meetings as described in the voir dire. (R. 17)

3. He responded to the objections to the proceedings entered by Acker's counsel before the board, and then he advised the board on how it should rule on the objections, suggesting that he would review the applicable law later for the board. (R. 19-20) Nowhere in the record thereafter is there any indication that the board was ever advised of the applicable law, nor is there even any indication that the

board ever again (after the board hearing on June 3, 1974) discussed or voted on these objections of Acker's counsel.

4. He then called witnesses and examined them on direct examination in presentation of the principal's direct case against the teacher. (R. 20-50)

5. He advised the board about taking a recess. (R. 34)

6. Prior to the June 3, 1974, board hearing, he had written the letter for the board giving the written reasons for non-renewal of Mr. Acker's contract (R. 55-56), even though the Fair Dismissal Act, Section 37-9-101, Miss. Code of 1972 (Supp. 1974) directed the superintendent to send the notice with the reasons as required by Section 37-9-109, Miss. Code of 1972 (Supp. 1974).

7. He objected to a motion to strike

testimony and allowed the Board to continue without ruling on the motion. (R. 65)

8. He advised the board on when and how they could decide the case. (R. 66)

9. Before the board hearing on June 3, 1974, he participated in giving the board advice on legal problems associated with the case, including whether the board had the power to rehire when there was no recommendation from a principal, as well as other procedural and substantive points, as reflected in the letters and minutes of the board. (R. 62, 65-66, 68, 71, 73, 75, 77, 78, 80.)

The U. S. Supreme Court in Morgan v. United States, 304 U. S. 1, 19-20 (1937), made clear that such procedures by administrative agencies or courts fail to meet the requirements of due process. In Morgan, the Secretary of Agriculture, after an

ostensibly "full hearing," delegated to the attorneys for the prosecution the task of preparing the decision. The Supreme Court held that this hearing was fatally defective for it lacked "those fundamental requirements of fairness which are of the essence of due process in a proceeding of a judicial nature." Id. at 19. The Court said:

> If in an equity cause, a special master or the trial judge permitted the plaintiff's attorney to formulate the findings upon the evidence, conferred ex parte with plaintiff's attorney regarding them, and then adopted his proposals without affording an opportunity to his opponent to know their contents and present objections, there would be no hesitation in setting aside the report or decree as having been made without a fair hearing. The requirements of fairness are not exhausted in the taking of consideration of evidence but extend to the concluding parts of the procedure as well as to the beginning and intermediate steps. Id. at 19-20.

The hearing and decision of the school board in Mr. Acker's case were tainted by the board's prejudgment of the case on March 14, 1974, and its ex parte reliance on the prosecutor (a) in setting procedures (R. 77,80) and reasons for termination (R. 55-56), (b) on his advice during the conduct of the hearing, (R. 3, 15, 17, 19, 20, 34, 65-80), and (c) in his participation in the final unarticulated decision as school board attorney. In the Judicial Branch, such contact is considered incurable error. How, then, can the same conflicting relationships foster justice and due process in the decision-making process of a quasi-judicial executive branch agency?

3. THE APPELLANT WAS DENIED DUE PROCESS IN THAT THE PASS CHRISTIAN SCHOOL BOARD WAS NOT AN IMPARTIAL DECISIONMAKER.

When procedural due process is required,

"an impartial decisionmaker is essential." Goldberg v. Kelly, supra at 271. The Courts uniformly have applied this requirement in teacher dismissal cases. Simard v. Board of Education of Town of Groton, 473 F. 2d 988, 993 (2nd Cir. 1973); Ferguson v. Thomas, supra at 856.

The Courts have recognized that impartiality is lacking if the decisionmaker is hostilely motivated toward the employee for reasons extrane us to those which are the subject of the hearing, or if the decisionmaker has prejudged the issues which are the subject of the hearing. See, e.g., Pickering v. Board of Education, 391 U. S. 563 at 578-579 n.2. (1968). In the instance case, both defects are apparent.

Initially, the board turned down Mr. Acker's first request for a hearing. (R. 52, 68)

Secondly, each of the board members during voir dire admitted that they had discussed the case with the superintendent and/or the board's attorney prior to the June 3, 1974, hearing. (R. 15-16)

Even worse, the school board's minutes of March 14, 1974, (R. 68) April 3, 1974, (R. 68) April 18, 1974, (R. 71) April 25, 1974, (R. 73) and May 2, 1974 (R. 75) reflect discussion of Mr. Acker's case by board members. These minutes contradict each of the board members' testimony (R. 15, 16) that the May 21st meeting was their only discussion of the Acker matter. Such a contradiction destroys the integrity of the board as an impartial decisionmaker. It strains credulity to assume that the board did not really form opinions and decisions about this case after six meetings during the two and one-half months before

the June 3rd hearing, especially in light of the case being known to the community through an early newspaper article. (R. 16) It is an ever greater strain on credibility to accept the board's testimony on voir dire to mean they forgot about those other five meetings on this case. They had, in fact, already decided they did not even have the power to hire him. (R. 52)

Even at the June 3, 1974, board hearing, the counsel for the board (prosecutor for the principal) attempted to discredit Acker before the board by reminding the board of their meeting on March 14, 1974, where Acker said things the counsel for the board characterized as contradictory. (R. 65)

The impatience of the board was exposed by comments made by Mr. Stallings. (R. 34)

The failure to discuss objections entered by Acker's counsel (R. 20) and the

failure even to rule on the motion by Acker's counsel to strike certain testimony (R. 65), give further indication of the partiality of the board in this case.

The personal stakes by the board and its attorney in the reasons for non-renewal (R. 55, 56) and the personal bias (R. 68, 71, 73, 75) and pre-judgment (R. 52, 68, 71, 73, 75) of those reasons, as well as the initial summary decision not to renew (R. 52) followed by the lack of honesty in the board not admitting all its prior discussion of this case to Acker's counsel on voir dire (R. 15, 16), are the kinds of bias and lack of due process which show that the decision of the board was infected by bias and prejudgment not consistent with standards of honesty and integrity in due process as described in Withrow v. Larkin,

421 U. S. 35, 95 S. Ct. 1456, 43 L. Ed. 2d 712 (1975) and Hortonville Joint School District No. 1 v. Hortonville Education Association, 426 U. S. 482, 96 S. Ct. 2308, 49 L. Ed. 2d 1 (1976).

4. THE BOARD'S FAILURE TO ARTICULATE THE REASONS FOR DISMISSAL AND THE EVIDENCE SUPPORTING THOSE REASONS DENIED APPELLANT DUE PROCESS.

Due process requires that, if the decisionmaker determines to take adverse action following the hearing, it must "state the reasons for (its) determination and indicate the evidence (it) relied on." Goldberg, supra at 271. As explained in Goldberg, the reason for this requirement is to assure that the decisionmaker has complied with its obligation to predicate the decision "solely" on the legal rules and evidence adduced at the hearing." Goldberg, supra

at 271. As explained in Goldberg, the reason for this requirement is to assure that the decisionmaker has complied with its obligation to prodicate the decision "solely on the legal rules and evidence adduced at the hearing." Goldberg, supra at 271. See, Morrissey v. Brewer, 92 S. Ct. 2593, 2603 (1972).

After the June 3, 1974, hearing, the minutes of the school board reflect the failure of the school board to state the basis for its decision (R 84). Nowhere else in the record has the board shown its reasons, after the hearing, for its decision. How, then, can the board assert that it has complied with its obligation to predicate its decision "solely on the legal rules and evidence adduced at the hearing?" Goldberg, supra at 271.

CONCLUSION

For the foregoing reasons, probable jurisdiction should be noted.

Respectfully submitted,

WILLIE C. ACKER

BY: _____
Gerald Blessey,
Counsel for Appellant

Paul Minor, Co-Counsel for Appellant

BLESSEY & MINOR ATTORNEYS
Post Office Drawer L
Biloxi, Mississippi 39533

CERTIFICATE OF SERVICE

As shown by the separately filed Certificate of Service, which lists the persons served with copies of this Jurisdictional Statement and its Appendix, service has been made upon all parties of record.

_____
Gerald Blessey, Counsel for Appellant

APPENDIX

AUGUST 26, 1974

IN THE CHANCERY COURT OF HARRISON COUNTY, MISSISSIPPI

FIRST JUDICIAL DISTRICT

IN VACATION 1974

WILLIE C. ACKER	APPELLANT,
VS.	NO. 65,295,
BOARD OF TRUSTEES OF THE PASS CHRISTIAN MUNICIPAL SEPARATE SCHOOL DISTRICT	APPELLEE.

OPINION OF THE COURT

This matter was heard by the Court under Mississippi's new statute, Chapter 577 of the General Laws of Mississippi, 1974 Regular Session (Senate Bill No. 2108), which became law on April 25, 1974, without approval of the Governor, and pursuant to Section 7 thereof, viz:

> "Appeals. Any employee aggrieved by the board's final decision shall have the right to appeal such decision, within thirty (30) days after receipt of the board's decision, to the appropriate Chancery Court in the manner provided in Section 11-5-79, Mississippi Code of 1972."

There appears to be no contention that the appeal to this Court or the procedure followed in reaching this Court is error, however, there is streniously presented alleged grevious errors in the procedure followed by the Board of Trustees of the Pass Christian Municipal Separate School District, appellee herein, hereinafter referred to as the "school board" in the procedure before it as to due process, notice, etc.

Realizing that this is a case of first impression under the above-referred to new statute as far as the school board and this Court is concerned, nevertheless, the laws or statutes in effect must be followed. This Court is of the opinion that the

school board failed to follow the law in the particulars hereinafter discussed and that their decision to dismiss the appellant in this case must be reversed procedurally if for no other reason.

I.

As stated above, Chapter 577 of the General Laws of Mississippi, 1974 Regular Session, became law on April 25, 1974. Although the appellant contends that due process and the equal protection of the law are constitutional rights guaranteed to him with or without this new statute, and the Court agrees with this, the school board also failed to follow the procedures outlined in the new statute. The Court is bound to say that from reading the record in this case (whether it be an appeal or trial de novo) it is apparent that the school board attempted with all

diligence to comply with this new law in conducting the hearing and complying with the procedures outlined therein, however, this Court is of the opinion that this new statute must be strictly construed and followed to the letter. Particularly is this true of a new statute and a case of first impression thereunder where we have no guidelines or precedents furnished by previously decided and reported cases.

II.

The notice of non-renewal was untimely. Section 8 of the new statute states:

> (Any superintendent, principal, teacher or employee who shall be entitled to notice under the provisions of this act, during the school year 1973-74, may be given such notice within thirty (30) days after the effective date of this act." (underscoring mine)

The act became effective on April 25, 1974. The first notice sent under the procedure specified by the act was dated

May 24, 1974, it appearing that on May 3, 1974, the superintendent wrote a letter to appellant granting a hearing before the school board but this letter was not "by registered mail return receipt requested," nor were the reasons "that he shall not be offered a new contract with facts supportive of those reasons" given as specified in the act. (Sections 5 and 6) Counting the effective date of the act, April 25, 1974, the notice given dated May 24, 1974, was not "within thirty (30) days after the effective date of this act", but was thirty (30) days and since the same was in letter form and marked "certified mail return receipt requested" it must be assumed that the same was not received by the appellant until at least the next day. If the date of April 25, 1974, is not counted in computing the "within thirty (30)

days" then May 24, 1974, would be twenty-nine (29) days and within the thirty (30) days but the notice could not have been received by the appellant until the next day or possibly two or three days, since May 24, 1974, was a Friday.

In addition, Section 4 of the act requires the notice to be tendered "by the superintendent" but the letter notice of May 24, 1974, was in fact tendered by the attorney for the school board.

III.

The hearing granted under Section 5(c) was untimely because it was granted more than fourteen (14) days from the date of receipt of appellant's request. Section 5(c) states:

> "An employee entitled to notice under Section 3 of this act shall be entitled to: (c) receive a fair and impartial hearing before the board within fourteen (14)

days from the date of receipt of the notice from the employee requesting a hearing."

The appellant had twice requested in writing a formal hearing - his first request is acknowledged and denied in the superintendent's letter of April 4, 1974. Again on April 12, 1974, appellant's former counsel requested a formal hearing. The superintendent responded to this last letter by letter dated May 3, 1974, setting a hearing on May 21, 1974. Although the hearing was continued by agreement until June 3, 1974, the May 21, 1974, setting was already untimely under the act because it was given more than fourteen (14) days beyond the date of the request no matter from which date the count is begun:

(a) If we count from the date of the superintendent's April 4, 1974, letter, it was forty-seven (47) days until the May 21,

1974 setting.

(b) If we count from the date of appellant's counsel's letter of April 12, 1974, it would be thirty-nine (39) days.

(c) If we count from the effective date of the act, April 25, 1974, it was twenty-six (26) days.

Section 5(c) gives a right to a hearing within fourteen (14) days from the receipt by the school board of the employee's request.

IV.

In view of the above ruling the Court does not pass upon nor decide the question as to whether or not the reasons given for not re-hiring the appellant were sound or of sufficient magnitude and/or import, if proven, to substantiate the school board's decision in this case.

V.

The decision of the school board - appellee will be reversed and an order entered in this cause that the appellant be offered a contract of employment for the 1974-75 school year at the regular salary for his status.

VI.

Counsel for appellant will prepare a decree in accordance with the ruling announced herein and submit the same to the Court for signature after having first secured approval as to form of opposing counsel. The costs of this action will be assessed equally between the appellant and the appellee in this cause.

VII.

The original of this opinion of the Court has this day been filed with the Clerk of the Chancery Court of Harrison County, Mississippi, First Judicial District, for

inclusion among the papers in this cause in conformity with the Rules in Chancery.

August 26, 1974.

/s/ Frank W. Alexander
CHANCELLOR, Division II.

FEBRUARY 17, 1976

IN THE SUPREME COURT OF MISSISSIPPI

NO. 48,527

BOARD OF TRUSTEES OF THE
PASS CHRISTIAN MUNICIPAL
SEPARATE SCHOOL DISTRICT

VS.

WILLIE C. ACKER

BEFORE INZER, SMITH AND SUGG

SMITH, JUSTICE, FOR THE COURT:

Acker, a school teacher, appealed to the Chancery Court of Harrison County from the action of the Board of Trustees of the Pass Christian Municipal Separate School District which had declined, following a hearing, to re-employ him. The hearing had been granted by the board under the provisions of the Mississippi Public School Fair Dismissal Act (Mississippi Code Annotated, Sections 37-9-101 through 37-9-113 (1972), which became effective April 25,

1974.)

On April 12, 1974, prior to the effective date of the act, Acker, through his counsel, requested a hearing before the school board. Previous requests had not been granted. On April 25, 1974, the Public School Fair Dismissal Act became effective. In the light of the new act, the board granted Acker's request for a hearing and set May 21, 1974, as the date, apparently because a Court Reporter would be available to take the testimony at that time. Acker was notified by letter May 3, 1974. But at the request of Acker, through his counsel, a continuance was granted and the hearing reset for June 3, 1974. The hearing was conducted, the board declined to re-employ Acker and he appealed, as provided in the act, to the Chancery Court of Harrison County.

The record of the evidence adduced at the hearing before the board was duly transmitted to the Chancery Court in its appellate role. When the case came on for hearing before the Chancellor a hearing de novo was granted as required by the terms of the statute. However, the Chancellor overturned the school board's action and ordered Acker's re-employment basing his decision on the proposition that there had been a departure by the board from procedures set up in the Public School Fair Dismissal Act. From this action on the part of the Chancery Court the board has appealed here. While Acker's appeal from the board's action was pending in the Appellate Court (Chancery Court) he filed in the appeal case a new and original action seeking, among other things, damages from the school board. On motion, the Chancellor dismissed

this bill and from his action in doing so, Acker has cross-appealed.

Dealing first with the cross-appeal, we hold that the Chancellor correctly refused to permit the filing of a new and original suit in the pending appeal case and in striking the bill. The case, on cross-appeal, is affirmed.

On direct appeal, it is urged on behalf of Acker that the failure of the board to comply with procedural requirements of the Public School Fair Dismissal Act, including its failure to act within seven days as provided in the act, was fatal to the board's power to confirm the decision not to re-employ him. The enactment of the new statutory procedures which became effective in the course of the dealings between Acker and the school board, which already were in progress, in the absence of

a showing of bad faith, requires that some indulgence be granted the board in its efforts to comply administratively with the requirements of the new statute.

On May 21, 1974, Acker, through his counsel, requested that the matter be continued, this was granted and the hearing was reset for June 3, 1974. It appears, therefore, that a considerable part of any resulting delay was occasioned by Acker himself. We do not think, under the peculiar circumstances of this case, and in the absence of a showing that any substantial actual prejudice resulted, that there was such a departure from statutory procedure as to deprive the board of its power to act.

The case must be reversed, however, on direct appeal and be remanded to the Chancery Court in order that the case may be

properly dealt with as an appeal from the action of the Board of Trustees, an administrative body. The Chancery Court, in its role as Appellate Court, is limited in cases such as this to a review of the record made before the administrative agency, in this case the Board of Trustees, for the purpose of determining from such record whether the action of the school board was or was not:

(1) Supported by substantial evidence,

(2) Arbitrary or capricious,

(3) Beyond the power of the administrative agency to make, or

(4) In violation of some statutory or constitutional right of the complaining party. (Mississippi State Tax Commission v. Mississippi-Alabama State Fair, 222 So.2d 644, 665, 666 (Miss. 1969)).

Under a provision of the Public School

Fair Dismissal Act, contained in Mississippi Code Annotated Section 37-9-113 (1972), it is sought to require that the hearing on appeal from the board to the Chancery Court "shall be de novo." This violates the Mississippi Constitutional separation of powers. In Mississippi State Tax Commission v. Mississippi-Alabama State Fair, supra, this Court said:

> Our Constitution does not permit the judiciary of this state to retry de novo matters on appeal from administrative agencies. Our Courts are not permitted to make administrative decisions and perform the functions of an administrative agency. Administrative agencies must perform the functions required of them by law. When an administrative agency has performed its function, and has made the determination and entered the order required of it, the parties may then appeal to the judicial tribunal designated to hear the appeal. The appeal is a limited one, however, since the Courts cannot enter the field of the administrative agency. The Court will entertain the appeal to

> to determine whether or not the order of the administrative agency (1) was supported by substantial evidence, (2) was arbitrary or capricious, (3) was beyond the power of the administrative agency to make, or (4) violated some statutory or constitutional right of the complaining party. This rule has been thoroughly settled in this state. See Loftin v. George County Board of Education, 183 So.2d 621 (Miss. 1966); City of Meridian v. Davidson, 211 Miss. 683, 53 So.2d 48 (1951); California Co. v. State Oil & Gas Board, 200 Miss. 824, 27 So. 2d 542 (1946); suggestion of error overruled, 200 Miss. 824, 847, 28 So.2d 120 (1946). (222 So.2d at 665, 666).

On direct appeal the case will be reversed and remanded to the Chancery Court for a review of the record made at the administrative hearing before the Board of Trustees. On cross-appeal the action of the Chancellor in dismissing the original bill filed in the appeal proceedings is affirmed, such dismissal, however, being without prejudice to the right to refile

in the proper tribunal.

ON DIRECT APPEAL REVERSED AND REMANDED, ON CROSS-APPEAL AFFIRMED.

GILLESPIE, C.J., PATTERSON, P.J. INZER, P.J., ROBERTSON, SUGG, WALKER AND BROOM, JJ., CONCUR.

NOVEMBER 30, 1976

IN THE CHANCERY COURT OF HARRISON COUNTY, MISSISSIPPI

FIRST JUDICIAL DISTRICT

IN VACATION 1976

WILLIE C. ACKER	APPELLANT,
VS.	NO. 65,295,
BOARD OF TRUSTEES OF THE PASS CHRISTIAN MUNICIPAL SEPARATE SCHOOL DISTRICT	APPELLEE.

OPINION OF THE COURT

This cause is before this Court on remand from the Mississippi Supreme Court in Board of Trustees of the Pass Christian Municipal Separate School District v. Acker, 326 So. 2d 799 decided February 17, 1976. Said cause having been "reversed and remanded to the Chancery Court for a review of the record made at the administrative hearing before the Board of Trustees."

The Supreme Court, in addition to holding the "de novo" section of the "Fair Dismis-

missal Act", Section 37-9-113 of the Mississippi Code of 1972, unconstitutional and limiting this Court's role to a review of the record made before the school board, also ruled that there was no departure from the statutory procedure as to deprive the school board of its power to act, stating "in the absence of a showing of bad faith, requires some indulgence be granted the board in its efforts to comply administratively with the requirements of the new statute." "We do not think, under the peculiar circumstances of this case, and in the absence of a showing that any substantial actual prejudice resulted, that there was such a departure from statutory procedure as to deprive the board of its power to act."

This Court previously held (Opinion dated August 26, 1974) that it was of the

opinion that the school board failed to follow the law in the particulars discussed and that their decision to dismiss the appellant in this case must be reversed procedurally if for no other reason, and that the Court did not pass upon nor decide the question as to whetheror not the reasons given for not re-hiring the appellant were sound or of sufficient magnitude and/or import, if proven, to substantiate the school board's decision in this case.

Pursuant to the remand this Court has now completed an exhaustive review of the record made at the administrative hearing before the Board of Trustees and finds as follows:

1. That the Chancery Court, in its role as an Appellate Court, is limited in cases such as this to a review of the record so made before the administrative agency (school board), for the purpose of deter-

mining from such record whether the action of the school board was or was not:

(1) Supported by substantial evidence,

(2) Arbitrary or capricious,

(3) Beyond the power of the administrative agency to make, or

(4) In violation of some statutory or constitutional right of the complaining party.

2. That it is not within this Court's power to determine whether or not the reasons given were sufficient to refuse to renew the appellant's teaching contract but only to determine if any of the above requirements were violated.

3. That this Court is of the opinion and so finds that the appellee (school board) acted neither arbitrarily nor capriciously in this matter, did not unlawfully or unconstitutionally violate the rights of

others or the complaining party, and acted within its powers in not renewing appellant's contract, and that its decision not to renew appellant's contract was based upon and supported by substantial evidence.

4. That since this Court finds no prejudicial error in its review of the record made at the administrative hearing before the Board of Trustees, the action of said board in not renewing the appellant's contract will be affirmed.

5. All costs of this action will be assessed equally between the appellant and appellee in this cause.

6. Appropriate decree may be prepared by counsel for appellee (school board) in line with the ruling announced herein and submitted to the undersigned Chancellor for signature after the same has been approved as to form by opposing counsel.

7. The original of this Opinion of the Court has this day been filed with the Clerk for inclusion among the papers in this cause in accordance with the Rules in Chancery.

November 30, 1976,

/s/ Frank W. Alexander
CHANCELLOR, DIVISION II

Page 292 Miss. 357 Southern Reporter, 2d Series

WILLIE C. ACKER

VS.

BOARD OF TRUSTEES OF PASS CHRISTIAN MUNICIPAL SEPARATE SCHOOL DISTRICT.

NO.: 51053.

Supreme Court of Mississippi.

March 8, 1978.

Rehearing Denied April 26, 1978.

Appeal from Chancery Court, Harrison County; Frank Alexander, Chancellor.

Gerald Blessey, Paul S. Minor, Biloxi, for appellant.

Jason H. Floyd, Jr., Gulfport, for appellee.

Before SMITH, P.J., ROBERTSON and LEE, JJ., and FRED P. WRIGHT, Commissioner.

AFFIRMED.

May 3, 1978

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

WILLIE C. ACKER	APPELLANT
VS.	NO.: 50,153
BOARD OF TRUSTEES OF THE PASS CHRISTIAN MUNICIPAL SEPARATE SCHOOL DISTRICT	APPELLEES

NOTICE OF APPEAL TO THE

SUPREME COURT OF THE UNITED STATES

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Attorneys for Appellant

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

WILLIE C. ACKER	APPELLANT
VS.	NO.: 50,153
BOARD OF TRUSTEES OF PASS CHRISTIAN MUNICIPAL SEPARATE SCHOOL DISTRICT	APPELLEES

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Willie C. Acker, the appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Mississippi Denying the Petition for Rehearing.

This appeal is taken pursuant to 28 U.S.C. Section 1257(2).

/s/ Gerald Blessey
GERALD BLESSEY, Attorney for
Willie C. Acker, Appellant

BLESSEY & MINOR
Attorneys at Law
Post Office Drawer L
Biloxi, Mississippi 39533
Telephone: 601-374-2247

CERTIFICATE OF SERVICE PER RULE 33(3) (b) OF THE SUPREME COURT OF THE UNITED STATES

I, Gerald Blessey, one of the attorneys for Willie C. Acker, appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 3rd day of May, 1978, I served copies of the foregoing Notice of Appeal to the Supreme Court of the United States on the appellee by service upon the Honorable Jason Floyd, Jr., as attorney for the Board of Trustees of the Pass Christian Municipal Separate School District, by mailing a copy to him in a duly addressed envelope with first class postage prepaid to his address at Post Office Box 1107, Gulfport, Mississippi 39501.

/s/ Gerald Blessey
GERALD BLESSEY,
Attorney for Willie C. Acker, Appellant

BLESSEY & MINOR
Attorneys at Law
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